SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 94

UNITED STATES OF AMERICA, PETITIONER

vs.

HAROLD T. LINDSAY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

Proceedings in the U. S. C. A. for the First Circuit.	Original	Print
Caption	1	1
Record from the U. S. D. C. for the District of Massachusetts	1	1
Complaint	1	1
Plaintiff's Exhibit "A"—Copy of Wool Handler's Agreement No. 5 dated April 20, 1944, and supplement dated May 9, 1944	6	4
Plaintiff's Exhibit "B"—Bond dated July 14, 1944	33	24
Motion to dismiss by defendant, Harold T. Lindsay	37	26
Motion to dismiss by defendant, Draper & Company, Inc.	37	27
Motion by defendants, Peerless Casualty Co., United Pacific Insurance Co., and General Casualty Co. of America to extend the time of pleading	38	27
Motion to dismiss by defendants, Peerless Casualty Co., United Pacific Insurance Co., and General Casualty Co. of America	39	28
Judgment of dismissal	40	28
Memorandum opinion, Sweeney, J	40	29
Notice of appeal	43	31
Statement of points	43	31
Designation of record (omitted in printing)	44	31
Clerk's memorandum re enlargement of time	44	31
Clerk's certificate (omitted in printing)	45	31
Caption	47	33
Opinion, Woodbury, J	47	33
Judgment	50	38
Clerk's certificate	50	38
Order granting certiorari	53	39

1 UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

October Term, 1952

UNITED STATES OF AMERICA, PLAINTIFF, APPELLANT

v.

HAROLD T. LINDSAY ET AL., DEFENDANTS, APPELLEES

RECORD ON APPEAL

No. 52-220 Civil Action

UNITED STATES OF AMERICA, PLAINTIFF

v.

HAROLD T. LINDSAY, PEERLESS CASUALTY COMPANY, UNITED PACIFIC INSURANCE COMPANY, GENERAL CASUALTY COMPANY OF AMERICA, AND DRAPER & COMPANY, INC., DEFENDANTS

Appeal of the United States of America as Plaintiff From Judgment of Dismissal (Sweeney, Ch. J.), Entered April 29, 1952

IN UNITED STATES DISTRICT COURT

Complaint—Filed February 29, 1952

The United States of America, plaintiff, by George F. Garrity, United States Attorney for the District of Massa-
2 chusetts, acting under the direction of the Attorney General of the United States, alleges that:

FIRST COUNT

I

This is an action brought by the United States of America based on a claim of Commodity Credit Corporation, a wholly-owned agency of the United States, created by the Commodity Credit Corporation Charter Act, 15 U. S. C. Supp., 714. The court has jurisdiction under Section 4 (c) of said act, 15 U. S. C. Supp., 714b (c). The aforesaid agency is successor in interest to the wholly-owned agency of the same name previously chartered under Delaware law. The claims of the Delaware charter corporation (hereinafter referred to as "Commodity") were transferred to the Federally-chartered corporation by Section 16 of the act aforesaid, 15 U. S. C. Supp., 714n.

II

The defendant, Harold T. Lindsay, is a resident of Boston, Massachusetts, within the jurisdiction of this Court.

III

The defendant, Draper and Company, Inc., warehouseman, is a corporation organized and existing under the laws of the State of Massachusetts, within the jurisdiction of this Court.

IV

The defendant, Peerless Casualty Company, is a corporation organized and existing under the laws of the State of New Hampshire, with a branch office and resident agent in Boston, Massachusetts, within the jurisdiction of this Court.

V

The defendant, United Pacific Insurance Company, is a corporation organized and existing under the laws of the State
3 of Washington, with a branch office and resident agent in Boston, Massachusetts, within the jurisdiction of this Court.

VI

The defendant, General Casualty Company of America, is a corporation organized and existing under the laws of the State of Washington, with a branch office and resident agent in Boston, Massachusetts, within the jurisdiction of this Court.

VII

The purpose of this action is to recover from Harold T. Lindsay (hereinafter referred to as "handler"), Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America, the handler's sureties, and from Draper and Company, Inc., for damage to wool owned by Commodity and stored in the Draper and Company warehouse.

VIII

The defendant handler, entered into a Wool Handler's Agreement with Commodity to purchase, handle, store, and sell domestic wool for the account of Commodity under the 1941 Wool Purchase Program. A true and correct copy of said contract with amendments thereto is attached hereto as part hereof, and marked Plaintiff's Exhibit "A".

IX

To secure the performance of the Wool Handler's Agreement aforesaid, the defendant handler, as principal, and the defendants, Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America, as sureties, executed on July 14, 1942, and delivered to Commodity, a bond in the amount of $200,000.00 to secure the performance and discharge of all undertakings by the handler under or in connection with the agreements which the handler had entered into or thereafter might enter into from time to time with Commodity, of which amount, Peerless Casualty Company was surety in the amount of $100,000.00, United Pacific Insurance Company was surety in the amount of $50,000.00, and General Casualty Company of America was surety in the amount of $50,000.00. A true and correct copy of the bond and of the endorsement thereon is attached hereto as part hereof, marked Plaintiff's Exhibit "B".

X

Pursuant to the Wool Handler's Agreement aforesaid, the defendant handler held in his custody wool acquired and stored for the account of Commodity. When acquired the wool was in a good and undamaged condition. Under the terms of the Wool Handler's Agreement aforesaid, the defendant handler was obligated to provide proper storage for the wool and to take such action as necessary to keep the wool in good condition. In violation of said Wool Handler's Agreement on or about February 26, 1943, 17,248 pounds of said domestic wool in grease were returned to Commodity in a wet and damaged condition. The damages to said wool were caused by the failure of the defendant handler to perform his obligations under the terms of the contract, as amended, to provide proper storage for the wool and to take such action as might be necessary to keep the wool in good condition.

In consequence, of the defendant handler's failure to carry out the terms of said contract, Commodity has suffered loss in the amount of $1,127.03, being the amount of damage sustained by the wool.

WHEREFORE, plaintiff demands judgment against the defendant, Harold T. Lindsay, and his sureties, Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America, for $1,127.03, with interest and costs.

5 SECOND COUNT

I

Each and every allegation contained in paragraphs I, II, and III of the First Count of this complaint is, by this reference, incorporated in this count and made a part hereof as though said allegations were set forth in full herein.

II

During 1944, various quantities of wool belonging to Commodity were delivered for storage to the defendant, Draper and Company, Inc. by the wool handler, Harold T. Lindsay. When delivered to the defendant, Draper and Company, Inc., the wool was in a good and undamaged condition. On or about February 26, 1945, 17,245 pounds of the wool were returned to Commodity in a wet and damaged condition.

III

In consequence of the damage to said wool while in the custody of Draper and Company, Inc., Commodity has suffered loss in the amount of $1,127.03, being the amount of damage sustained by the wool.

WHEREFORE, plaintiff demands judgment against the defendant, Draper and Company, Inc., for $1,127.03, with interest and costs.

GEORGE F. GARRITY,
United States Attorney.

By: (s) STANLEY W. WISNIEWSKI,
Asst. United States Attorney.

6 PLAINTIFF'S EXHIBIT A TO COMPLAINT

Conformed Copy

For Handlers of California
Processing Wools

SUPPLEMENT TO WOOL HANDLER'S AGREEMENT No. 5

(Shorn Wool)

THIS AGREEMENT made and entered into by and between Commodity Credit Corporation (hereinafter called "Commodity") and Harold T. Lindsay* (hereinafter called the "Handler") is in supplement to and in amendment of the Wool Handler's Agreement (1944) dated April 20th, 1944, entered into between the parties hereto.

In addition to the covenants and agreements contained in the Wool Handler's Agreement aforesaid, It Is Hereby Agreed as follows:

1. All California defective, scouring and/or carbonizing type wools purchased for the account of Commodity under the Handler's Agreement aforesaid shall be scoured and/or carbonized before the wool is appraised.

2. In the case of such wools so scoured or carbonized, unless a deduction for scouring service has been made from the appraisal value of the wool in computing the purchase price pursuant to paragraph 7 (f) of the Handler's Agreement, there shall be deducted, in addition to the other deductions specified in the Handler's Agreement, an additional handling charge of one and one-half (1½) cents per pound of grease wool to cover the additional expense involved in handling this type of wool.

3. The amount to be paid the producers, pools, or secondary handlers, grease basis, for a line of wool so scoured or carbonized, shall be pro-rated among them on the basis of the quantity of wool each has in the line and on the basis of the length, quality (grade), shrinkage, and extent of the defect in such wool as determined by the Handler before scouring or carbonizing.

The Handler shall furnish Commodity with copies of his determination with respect to each such individual lot of wool.

4. Commodity shall pay the Handler, in addition to the other sums payable to the Handler under the Handler's Agreement, an amount equal to the amount, if any, deducted from the appraised value of the wool under paragraph 2 above, in computing the purchase price.

In witness whereof, the parties hereto have executed this supplement on this 9th day of May, 1944.

Attest:

COMMODITY CREDIT CORPORATION,
By (s) G. E. RATHBUN,
Vice President.

ZELMA DAVIS,
Assistant Secretary.

Attest:

HAROLD T. LINDSAY,*
(Handler)

RICHARD D. CRAIG,
Notary Public.
My Commission Expires Feb. 9, 1951.

By (s) HAROLD T. LINDSAY,
Partner
(Title)
*49 Melcher Street
Boston, Massachusetts.

[redacted]

[redacted]

[redacted]

Wool Handler's Agreement

(Short Form)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Handler shall show bags of wool which are representative of the lot. The Appraisal Committee, however, may require the Handler to show, at the expense of the Handler, and may examine any number of bags of wool in the lot.

The appraised value of the wool shall be based on:

(i) The Appraisal Committee's determination of grade, length, staple, type, and classification of the wool as shown in the Appraisal Committee's Certificate; and

(ii) The price thereof as shown in the Schedule of Values attached hereto, which shall be subject to amendment by Committee from time to time.

Any such determination of appraised value for original bag wool shall, except in the case of free wool, be subject to the right of the producer, pool, or secondary handler to request a reappraisal of such wool by an Appeal Committee upon application to the Handler not later than fifteen (15) days after the mailing by the Handler of a copy of the Appraisal Committee's Certificate, as provided in paragraph 13 hereof; Provided, That (i) such wool is available for reappraisal in original bags or bales at the time the application for reappraisal is received by the Handler, and (ii) the producer, pool, or secondary handler has not accepted payment from the Handler for such wool. Any such reappraisal shall be made under the direction and in the area of the Area Appraiser who made the original appraisal and shall be final. In the event such reappraisal confirms the original appraisal, the actual cost of such reappraisal (including the Handler's charges for taking down and storing appraised bags or bales at not to exceed seventy-five (75) cents each), but not to exceed $50.00, shall be charged to the producer, pool, or secondary handler. In the event such reappraisal differs from the original appraisal, the purchase price shall be adjusted accordingly.

Deductions

(a) **For Grading.** For any wool for which the Handler has provided grading, a grading charge of not to exceed three-fourths (¾) of a cent per pound of grease wool shall be deducted from the appraised value of the wool in computing the purchase price.

(b) **For Scouring and Carbonizing.** For any wool scoured or carbonized, the actual scouring or carbonizing costs paid or payable by the Handler, including the cost of sorting the wool and transporting it from the warehouse to the scouring mills, and if necessary, from the scouring mills to the place of storage, shall be deducted from the appraisal value of the wool in computing the purchase price.

(B) The minimum rail or trucking freight rate to Portland from the shipping point of the wool plus ten (10) cents per hundredweight, plus two (2) cents per pound for grease wool, or three and one-half (3½) cents per pound for scoured or carbonized wool; except that if transit privileges are not available, the actual freight from the shipping point to the place where the wool is appraised, plus the minimum rail or trucking freight rate from the place where the wool is appraised to Portland, plus ten (10) cents per hundredweight, plus two (2) cents per pound for grease wool or three and one-half

(8½) cents per pound for scoured or carbonized wool;

(d) For Handling. For any wool for which the Handler must render a single accounting sales, a handling charge, not to exceed the amount stated below, shall be deducted from the appraised value in computing the purchase price.

(i) One and three-fourth (1¾) cents per pound of grease wool, or four and one-fourth (4¼) cents per pound of scoured or carbonized wool purchased from a producer, pool, or secondary handler in lots of 5,000 pounds or more; or

(ii) Two and one-half (2½) cents per pound of grease wool, or five and one-half (5½) cents per pound of scoured or carbonized wool purchased from a producer, pool, or secondary handler in lots of less than 5,000 pounds.

(iii) Plus one-fourth (¼) of a cent per pound of grease wool on which an advance payment has been made in accordance with paragraph 5 hereof.

(e) For Wool Received on Consignment by Secondary Handler. In the case of wool which is consigned to a secondary handler by a producer, and is from is delivered to the Handler and with respect to which the Handler must render a direct accounting to the producer, the secondary handler's customary charges, but not to exceed one and one-half (1½) cents per grease pound, shall be deducted from the appraised value in computing the purchase price, and the amount of such deduction shall be remitted to such secondary handler.

(f) For Wool Received on Consignment by Handler with Respect to Which Handler, with Approval of Commodity, Has Performed Country Service. For wool received on consignment by the Handler with respect to which the Handler, with prior written approval of Commodity, has performed country service, a country service charge in the following amounts shall be deducted from the appraised value in computing the purchase price, provided no prior deduction or charge has been made or allowed hereunder for secondary handling charges:

(i) One and three-fourths (1¾) cents per grease pound for wool which the Handler has collected in bulk from farms, transported at his own expense from farms to country assembly points, rough-graded at his own expense, packed at his own expense in his own bags, stored at his own expense prior to shipment, and delivered to a local warehouse of the Handler or loaded on trucks or cars for shipment to warehouses of the Handler other than a local warehouse;

(ii) One and one-half (1½) cents per grease pound for wool which the Handler has received from producers at country assembly points, including his own warehouse, and with respect to which he has performed at his own expense all the other services specified in (i) above;

(iii) One (1) cent per grease pound for wool with respect to which the Handler has not performed all of the services specified in (i) or (ii) above.

8. Commodity's Purchase Price for Wool Purchased by Secondary Handler or Pool. Commodity's purchase price for wool, other than free wool, purchased from a secondary handler or a pool who purchased such wool from producers shall be an amount equal to the appraisal value less the deductions specified in paragraph 7 and less an additional two (2) cents per pound, except that, if the secondary handler or pool furnishes a certification, as hereinafter provided, as to the amount paid the producers for such wool, Commodity's purchase price shall be the amount paid the producers plus:

(i) In the case of wool which the secondary handler or pool has collected in bulk from farms and transported at his own expense, from farms to country assembly points, rough-graded at his own expense, packed at his own expense in his own bags, stored at his own expense prior to shipment to the Handler, and delivered to a local warehouse of the Handler or loaded on trucks or cars for shipment to warehouses of the Handler other than a local warehouse—two and one-half (2½) cents per pound, grease weight, for lots of 5,000 pounds or more, or one and three-fourths (1¾) cents per pound, grease weight, for lots of less than 5,000 pounds;

(ii) In the case of wool which the secondary handler or pool has received from producers at country assembly points, including his own warehouse, and with respect to which he has performed the other services specified in (i) above—two and one-fourth (2¼) cents per pound, grease weight, for lots of 5,000 pounds or more, or one and one-half (1½) cents per pound, grease weight, for lots of less than 5,000 pounds;

(iii) In the case of wool with respect to which the secondary handler or pool has not performed all of the services specified in (i) or (ii) above—one and one-half (1½) cents per pound, grease weight, for 5,000 pounds or more, or one (1) cent per pound, grease weight, for lots of less than 5,000 pounds.

Provided, however, That such purchase price shall in no event exceed the appraisal value less the deductions specified in paragraph 7.

The certification referred to above shall be a written certification to the Handler, as to the quantity of wool purchased from each producer and the amount paid or payable therefor. A copy of such certification, with the addresses of the producers included, must be filed by the secondary handler with the County Agricultural Conservation Committee for the county in which the secondary handler has his principal place of business. The certification which is furnished the Handler must contain a statement by such County Agricultural Conservation Committee that a copy of the certification has been filed with it.

9. Commodity's Purchase Price for Wool Purchased by Handler in His Own Name. Commodity's purchase price to be paid to the Handler for wool, other than free wool, purchased by the Handler from producers with the approval of Commodity, in his own name, for sale to Commodity, shall be the amount paid by the Handler to the producers for such wool plus a country service fee in an amount equal to the country service charge specified in paragraph 7 (f) hereof: Provided, however, That Commodity's purchase price shall in no event exceed the appraisal value less the deductions specified in subparagraphs (a), (b), (c), and (d), of paragraph 7 hereof.

Commodity shall, upon application by the Handler, make a provisional payment to the Handler for such wool in an amount equal to the appraisal value less the deductions specified in subparagraphs (a), (b), (c), and (d), of paragraph 7 and in paragraph 12 hereof: Provided, however, That the Handler shall at such times as Commodity may specify, certify in writing to Commodity the amount paid to the producers for such wool, and, if the amount of the provisional payment theretofore made exceeds the amount paid to the producers, plus the country service fee aforesaid, the Handler shall refund to Commodity an amount equal to such excess.

10. Wool Received on Consignment by Secondary Handler or Pool. Wool which is received by a secondary handler or a pool on consignment from producers, under consignment contracts authorizing the secondary handler or pool to receive payment for the wool on behalf of the producers, and for which an individual account sales must be rendered to the producer by the secondary handler or pool, may be purchased by the Handler for the account of Commodity only in the event that the handling charge made by the secondary handler or pool with respect to such wool does not exceed the customary charge of such secondary handler or pool or the following charge:

(i) In the case of wool which the secondary handler or pool has collected in bulk from farms and transported at his own expense from farms to country assembly points, rough-graded at his own expense, packed at his own expense in his own bags, stored at his own expense prior to shipment to the Handler, and delivered to a local warehouse of the Handler or loaded on trucks or cars for shipment to warehouses of the Handler other than a local warehouse—two and one-half (2½) cents per pound, grease weight, for wool received by the secondary handler in lots of less than 5,000 pounds and combined by him into lots of more than 5,000 pounds, or one and three-fourths (1¾) cents per pound, grease weight, for other lots;

(ii) In the case of wool which the secondary handler or pool has received from producers at country assembly points, including his own warehouse, and with respect to which he has performed the other services specified in (i) above—two and one-fourth (2¼) cents per pound, grease weight, for wool received by the secondary handler in lots of less than 5,000 pounds and combined by him into lots of more than 5,000 pounds, or one and one-half (1½) cents per pound, grease weight, for other lots;

(iii) In the case of wool with respect to which the secondary handler or pool has not performed all of the services specified in (i) or (ii) above—one and three-fourths (1¾) cents per pound, grease weight, for wool received by the secondary handler in lots of less than 5,000 pounds and combined by him into lots of more than 5,000 pounds, or one (1) cent per pound, grease weight, for other lots.

The Handler shall require, as a condition of the purchase, that the secondary handler or pool transmit to Commodity in Washington, D. C., copies of the account sales rendered to the producers.

11. Wool Received by Handler from Pools.

(a) Separate Accounts. If wool received by the Handler from a pool was delivered for the separate accounts of the individual producers making up such pool, the wool of each individual producer shall be deemed to have been received directly from such producer, or, if the pool performs the service of a secondary handler, from such secondary handler for the individual account of such producer.

(b) Joint Accounts. If wool received by the Handler from a pool was delivered for the joint account of all producers making up such pool, the wool shall be deemed to have been received from, and the pool shall be treated as a single producer, or, if the pool performs the services of a secondary handler, the wool shall be

deemed to have been received from such secondary handler for the account of the pool treated as a single producer. When the pool renders individual account sales to producers, one copy of each such account sales shall be forwarded to Commodity.

12. Payment of Purchase Price to Producer, Pool, or Secondary Handler. The Handler shall, within thirty (30) days after the appraisal of wool delivered to the Handler hereunder, or, in the case of a reappraisal, within (30) days after such reappraisal, pay to the producer, pool, or secondary handler the pur-
21 chase price of such wool less a service and appraising charge of one and one-eighth (1⅛) cents per pound in the case of grease wool, or two and eight-tenths (2.8) cents per pound in the case of scoured or carbonized wool and less the actual cost (but not to exceed $40.00) of any reappraisal made where the original appraisal was confirmed.

13. Account Sales. When the Handler makes payment for wool pursuant to paragraph 12 hereof, he shall transmit to the producer, pool, or secondary handler an account sales in form approved by Commodity. In the case of original bag wool, such account sales shall be accompanied by a copy of the Appraisal Committee's Certificate, or Appeal Committee's Certificate, if any. If the wool has been graded or grouped into lines, the account sales shall show the grade, shrink, weight, and appraisal value of each grade thereof as shown by the Appraisal or Appeal Committee's Certificates, and shall identify such certificates by serial numbers.

14. Transit Insurance. All wool received by the Handler shall be insured by him against loss or damage by fire, lightning, windstorm, flood, tornado, and rain, while it is in transit and prior to its receipt in the warehouse. Commodity shall not be responsible, nor shall the handler obligate Commodity to be responsible for loss or damage to the wool prior to its receipt in the warehouse. The Handler shall indemnify and save Commodity harmless from any loss of or damage to the wool prior to its receipt in the warehouse or from any claim made against Commodity on account of such loss or damage.

STORAGE OF WOOL

15. General. The Handler shall, subject to the right of Commodity to direct where the wool shall be stored, provide proper storage, upon the terms and conditions hereinafter specified,
22 for the wool received by the Handler for purchase hereunder and shall take such action as may be necessary to keep such wool in good condition. The Handler shall notify Commodity immediately of any damage to, or loss or destruction of, such wool. The Handler shall stencil or mark all bags and bales containing such wool with the letters "C. C. C." Notwithstand-

ing any other provision hereof, Commodity shall have the right at any time it determines the wool is improperly stored hereunder to require any such wool to be rewarehoused at the Handler's expense in such facilities as Commodity may specify.

(a) Warehouse Receipts. The Handler shall, upon receipt of wool for storage hereunder, unless Commodity approves otherwise, issue negotiable or nonnegotiable warehouse receipts therefor, which shall comply in form with the Uniform Warehouse Receipts Act.

(b) Warehouse Insurance. The Handler shall not, unless otherwise indicated in the space below, be obligated to insure the wool received hereunder after it is placed in the warehouse, and, unless the Handler is obligated to insure the wool, Commodity shall indemnify and save the Handler or producer, pool, or secondary handler from which such wool was received harmless from any loss of or damage to the wool after it is placed in the warehouse or from any claim made against the Handler on account of such loss or damage, provided such loss or damage does not result from the failure of the Handler or his agents to use due care in regard to the wool.

The Handler shall at any time Commodity notifies the Handler in writing insure the wool as provided herein.

Accepted HAROLD T. LINDSAY
By (s) HAROLD T. LINDSAY

If there has been inserted in the space above a requirement that the wool be insured while in storage, the Handler shall, at
23 his own expense, insure such wool against loss or damage by fire, including sprinkler damage, lightning, windstorm, tornado, flood, and rain, with such companies, under such policies and in such amounts as Commodity may approve or specify.

SALE OF WOOL

16. General. The Handler shall, as rapidly as possible, sell in the usual channels of trade and for the account of Commodity wool purchased hereunder.

(a) Sales Price. Unless otherwise specifically directed or authorized by Commodity in writing, all such sales shall be made for cash without discount:

(i) delivered at the warehouse in which such wool is stored at the time of sale and at the appraisal value, less, in the case of wool stored in warehouses located outside of Boston, Massachusetts, the minimum freight rate from such point of storage to the railroad destination of the purchaser thereof, but in no event shall such deduction exceed the

freight deduction made with respect to such wool under paragraph 7 (c) hereof; or

(ii) f. o. b. car at the railroad destination of the purchaser thereof and at the appraisal value, but sales shall not be made upon this basis if the minimum freight rate from the point of storage to such railroad destination exceeds the freight deduction made with respect to such wool under paragraph 7 (c) hereof;

Provided, That off wools as defined by Commodity or the Chief Wool Appraiser shall be sold at not less than prices determined by the Appraisal Committee.

(b) Basis of Sale. All such sales shall be made on the basis of the Appraisal Committee's Certificate, or the Appeal Committee's Certificate, if any, and the out-weights of the warehouse in which such wool is stored at the time of sale, or, in the case of wool for which no warehouse receipts have been issued, the in-weights of the purchaser accompanied by the invoice weights. The purchaser, within ten (10) days after receipt of such wool, shall have the right to require a reappraisal of such wool by an Appeal Committee upon application to Commodity or to the Handler provided such wool is available for reappraisal in the state in which it was received by the purchaser. Any such reappraisal shall be final and in the event such reappraisal confirms the appraisal shown on the Appraisal or Appeal Committee's Certificate, as the case may be, the cost of such reappraisal shall be paid by the purchaser to Commodity. In the event such reappraisal differs from that shown on the appraisal or Appeal Committee's Certificate, the sales price shall be adjusted accordingly.

24

(c) Remittance of Proceeds of Sale. The Handler shall immediately remit all sales proceeds, accompanied by such documents as Commodity may prescribe, directly to Commodity or to the Bank.

(d) Acceleration of Sales. If the rapidity with which the Handler sells wool purchased hereunder is at any time not satisfactory to Commodity, Commodity may, by written notice, request the Handler to accelerate sales, and if the Handler fails to do so within thirty (30) days from the receipt of such notice, Commodity may itself sell any part or all of any wool remaining unsold at such times and in such manner and upon such terms and conditions as Commodity may determine. Notwithstanding any other provision hereof, Commodity shall have the right upon notice to the Handler at any time immediately to take over any or all wool purchased hereunder, or the sale or disposition thereof, and to sell or otherwise dispose of such wool at such times, in such

manner and upon such terms and conditions as Commodity may determine: Provided, That if Commodity exercises such right without giving the Handler a minimum of thirty (30) days' prior notice, it shall pay the Handler an amount equal to the amount withheld pursuant to paragraph 20 (b) hereof, without requiring the wool to have been sold by the Handler, unless Commodity takes over such wool, or the sale or disposition thereof, because of a breach of this agreement. In the event Commodity takes over any wool purchased hereunder, or the sale or disposition thereof, Commodity shall not be obligated to pay the Handler for the bags in which the wool is contained.

PAYMENTS TO HANDLER

17. Reimbursement for Purchase Price. Within thirty (30) days after the Handler has settled in full with the producer, pool, or secondary handler for wool purchased hereunder, as provided in paragraph 12 hereof, the Handler shall make application, in form approved by Commodity, for the amount so paid and shall tender, either directly to Commodity or to the Bank the following documents applicable to the wool, and Commodity or the Bank shall promptly pay to the Handler such amount less any amount previously paid to the Handler as reimbursement for advance payments pursuant to paragraph 4 hereof, provided such documents are submitted in proper form and are properly executed by the Handler:

(i) Request for Payment in form approved by Commodity;
(ii) Copy of the account sales;
(iii) Warehouse receipts representing the wool; and
(iv) Appraisal Committee's Certificate or Appeal Committee's Certificate, if any.

In case the documents are submitted to the Bank, a copy of the Request for Payment, appraisal certificate, and account sales shall also be transmitted to Commodity at Washington, D. C. The Handler shall in all cases warrant that wool purchased hereunder is free and clear of any and all liens and encumbrances.

If wool purchased hereunder is sold prior to the time the Handler requests reimbursement, the Handler shall, in making application for such reimbursement, remit therewith the proceeds of such sale.

The Handler, upon execution of a trust receipt in form satisfactory to Commodity, may, in order to effectuate the purposes of this agreement, obtain possession of warehouse receipts delivered to the Bank pursuant to the provisions of this paragraph. De-

livery orders may also be obtained upon execution of a trust receipt in form approved by Commodity.

18. Reimbursement for Freight and Trucking. (a) Commodity shall reimburse the Handler for actual freight and trucking costs, and, if the wool was shipped by the producer, pool, or Handler, whether prior to or after receipt, but, if any, paid by the Handler for the shipment of wool purchased hereunder to warehouses in Boston, Philadelphia, or Portland, Oregon, but such reimbursement shall not exceed, without prior approval of Commodity, amount in the case of Handler shorn wool [illegible] under paragraph 7 (c) hereof or, in the case of Purchase Graded Wool, the amount disclosed under paragraph 7 (c) hereof less two (2) cents for grades 64's and three and one-half (3½) cents for scoured or carbonized wool. In the case of wool stored in Boston in warehouses having facilities unloading railroad cars, Commodity shall reimburse the Handler for actual unloading costs, up to ten (10) cents per hundredweight, paid by Handler for unloading the wool from railroad cars. In the case of wool stored in Boston under transit billing at [illegible] Commodity shall reimburse the Handler for the amount (not to exceed ten (10) cents per hundredweight) paid for such [illegible] transit privilege in accordance with applicable tariffs: Provided, That if such wool is subsequently shipped direct from such point of storage [illegible] Commodity for the account of Commodity, the amount of [illegible] Commodity for the use of the storage-in-transit [illegible] from the amount of reimbursement [illegible] for freight.

(b) Commodity shall [illegible] Handler for the actual [illegible] for all wool [illegible] under [illegible] Commodity [illegible] the [illegible] Handler [illegible] Commodity [illegible] the [illegible] Commodity [illegible] the [illegible] Commodity [illegible] the

(i) Rates on Bales of Wool:
Fifteen (15) cents per bale of wool weighing less than 350 pounds;
Twenty-five (25) cents per bale of wool weighing 350 to 500 pounds;
Thirty (30) cents per bale of wool weighing 500 pounds or more.

(ii) Rates on Bags of Wool:
For wool grown in the Fine Staple area:
Fifteen (15) cents per bag of wool of six and one-half (6½) feet or less in length; twenty (20) cents per bag of wool of more than six and one-half (6½) feet in length.
For wool grown elsewhere:
Ten (10) cents per bag of wool of six and one-half (6½) feet or less in length; fifteen (15) cents per bag of wool of more than six and one-half (6½) feet in length.

(iii) Rates on Wool [illegible]

[illegible]

applicable to Commodity for a Wool Handler's Agreement, or amendment thereto, and shall not in any event exceed the charges specified above.

20. Payment for Grading, Scouring, Carbonizing, Handling, etc.

(a) In addition to the reimbursements or payments made pursuant to paragraphs 17, 18, and 19, Commodity shall pay to the Handler, subject to the provisions of subparagraph (b) of this paragraph 20, for grading, scouring, carbonizing, handling, and

all other services which he renders or provides with respect to the wool, an amount equal to the amount deducted from the appraised value of the wool under subparagraphs (a), (b), (d), (e), and (f) of paragraph 7 hereof, plus seventy-five (75) cents per bag for taking down and displaying bags for reappraisals.

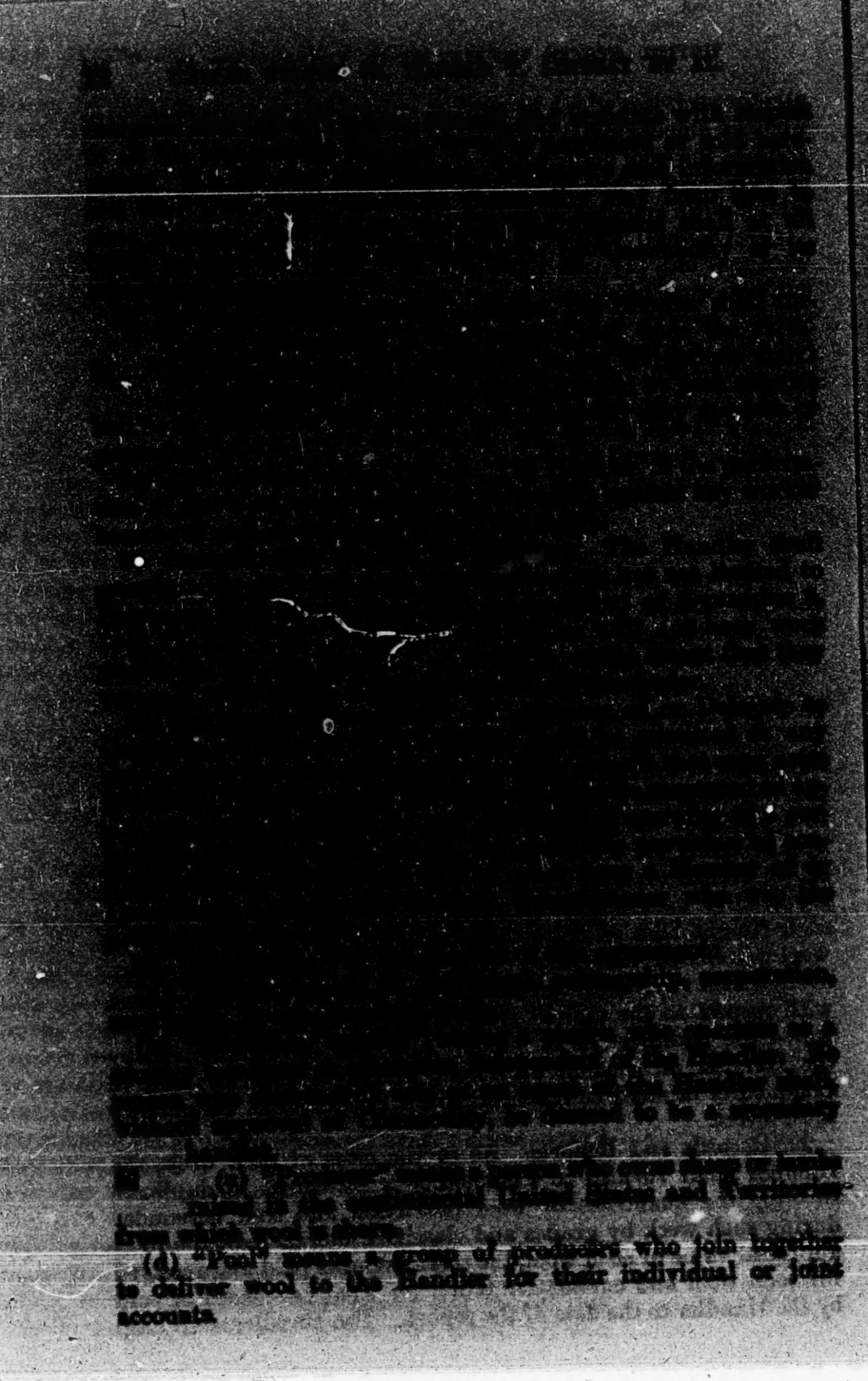
(b) One-half (½) of a cent per pound in the case of grease wool and one (1) cent per pound in the case of scoured or carbonized wool purchased hereunder shall be withheld from the amounts payable under subparagraph (a) of this paragraph 20, until the wool is sold by the Handler and the proceeds are remitted to Commodity. In case wool purchased hereunder is not sold by the Handler, such amount withheld shall not be paid by the Handler except as provided in paragraph 18 (d) hereof.

(c) No charges other than those for which payment is specifically provided in this agreement shall be made by the Handler.

Miscellaneous

21. Transit Privileges. The Handler shall hold and shall use for the account of Commodity all paid in-bound freight bills or transit tonnage slips evidencing transit privileges in connection with wool purchased hereunder. In connection with each such freight bill or transit slip, the Handler shall keep a current record showing the original shipping point, date and number of waybill, date and number of the freight bill, name of the carrier, the transit weight, the use of the transit privilege, and the amount of transit privilege, and the Handler shall, in accordance with the carrier's tariff and rules of the carrier's agent, record for the account of Commodity, each such freight bill or transit tonnage slip and take all steps necessary to secure Commodity such transit privilege. The Handler shall affix such freight bills or transit tonnage slips to the reshipment of wool purchased hereunder. The Handler shall furnish Commodity such reports as Commodity may from time to time request with respect to the unused freight bills or transit tonnage slips which the Handler has on hand. Any cash refund received by the Handler on account of transit privileges shall be paid to Commodity or shall be refunded to the producers as Commodity shall direct.

22. Records and Reports. As of the close of each week, the Handler shall furnish to Commodity a statement in duplicate showing the quantities of wool purchased and sold hereunder during such week by grades and classifications thereof, the total appraisal value of such wool, the total amounts paid and received for such wool and cumulative totals for wool purchased or sold by the Handler to the date of the report. The Handler shall keep



(d) "Pool" means a group of producers who join together to deliver wool to the Handler for their individual or joint accounts.

[illegible]

Conformed Copy

THE PEERLESS CASUALTY COMPANY
Keene, New Hampshire

War Food Administration
Commodity Credit Corporation
Wool Form M - 1946) Wool Handler's Bond

Know all men by these presents, that the undersigned Harold T. Lindsay, 49 Melcher Street, Boston, Massachusetts, as Principal (hereinafter called "Principal"), and the Peerless Casualty Company, a corporation organized and existing under the laws of the State of New Hampshire, and United Pacific Insurance Company, a corporation organized and existing under the laws of the State of Washington, and General Casualty Company of America, a corporation organized and existing under the laws of the State of Washington, as Surety, (hereinafter called "Surety"), are held and firmly bound unto the Commodity Credit
24 Corporation, a corporate agency of the United States of America, in the sum of Two Hundred Thousand and 00/100 Dollars ($200,000.00), as follows: The Principal and the Peerless Casualty Company as Surety, jointly and severally in the sum of One Hundred Thousand and 00/100 Dollars ($100,000.00) and no more; the Principal and the United Pacific Insurance Company as Surety, jointly and severally in the sum of Fifty Thousand and 00/100 Dollars ($50,000.00) and no more; the Principal and the General Casualty Company of America as Surety, jointly and severally in the sum of Fifty Thousand and 00/100 Dollars ($50,000.00) and no more, for the payment of which sum, well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents as hereinabove provided.

The Obligors herein expressly agree that, for the purpose of allowing a joint action against any or all of them, and for that purpose only, this bond shall be treated as the "joint and several" as well as the "several" obligation of each of the Obligors.

Whereas, the Principal has heretofore entered into or may hereafter from time to time enter into one or more agreements with the Commodity Credit Corporation under which the Principal will receive and purchase wool for the account of Commodity Credit Corporation, and will store, handle, sell, and perform other services with respect to such wool (such agreements are hereinafter referred to as "Agreements"); and

Whereas, the Commodity Credit Corporation desires to be secured against the Principal's failure to perform fully the Principal's obligations and undertakings under or in connection with such Agreements and any amendments or supplements thereto, and under or in connection with any invoices, trust receipts, or other documents executed in connection therewith.

Now, therefore, the condition of the foregoing obligation is such, That if the Principal shall well and truly perform and discharge all the Principal's obligations and undertakings under or in connection with such Agreements or any amendments or supplements thereto (the Surety hereby waives notices of the execution and contents of such agreements and amendments or supplements thereto); and under or in connection with any invoices, trust receipts, or other documents of any kind executed in connection therewith (the Surety also hereby waives notice of the execution and contents of such documents); shall indemnify the Commodity Credit Corporation for the amount of any improper or incorrect payment received by the Principal as a result of any false, inaccurate, or misleading invoice, trust receipt, or other document of any kind executed in connection with such Agreements and any amendments or supplements thereto; and shall indemnify the Commodity Credit Corporation for any amount paid to the Principal by or on behalf of the Commodity Credit Corporation which did not represent an obligation of the Commodity Credit Corporation under or in connection with such Agreements and any amendments or supplements thereto, then this obligation shall be void and of no effect; otherwise it shall remain in full force and effect.

This bond shall be effective from May 1, 1944, and shall continue to be effective so long as such Agreements and any amendments or supplements thereto or any obligation or undertaking of the Principal under or in connection therewith remains in effect; Provided, however, That this bond may be cancelled at any time by the Surety by giving written notice to the Commodity Credit Corporation, Washington, D. C., of its intention to cancel this bond and all liability hereunder shall terminate ninety (90) days after the date of the receipt of such notice, except that the rights of the Commodity Credit Corporation shall not be affected by such notice as to any claims arising hereunder, whether presented or not, before the effective date of such cancellation notice.

Sealed with our seals, signed and dated this 14th day of July, 1944.

By (s) HAROLD T. LINDSAY, *Principal.*
PEERLESS CASUALTY COMPANY,
By (s) BELLA WIESLOW, *Attorney-in-Fact.*
UNITED PACIFIC INSURANCE COMPANY,
By (s) D. MORTON GRAY, *Attorney-in-Fact.*
GENERAL CASUALTY COMPANY OF AMERICA,
By (s) D. MORTON GRAY, *Attorney-in-Fact.*

Obligee's Consent to Cancellation of Prior Bonds

The Commodity Credit Corporation hereby consents, provided this bond is duly executed by the Principal and Surety, to the cancellation by the Principal and the Surety involved, of any prior Wool Handler's Bond executed by the Principal, such cancellation to be effective as of the effective date of this bond, except that the rights of the Commodity Credit Corporation shall not be affected by such cancellation as to any claims arising under such prior bond or bonds, whether presented or not, before the effective date of such cancellation.

COMMODITY CREDIT CORPORATION,
By (s) C. C. FARRINGTON, *Vice President.*

Attest:
(s) NORRIS J. FAUBLE,
Assistant Secretary.

37 In United States District Court

Motion to Dismiss by Defendant Harold T. Lindsay—Filed March 5, 1952

The defendant Harold T. Lindsay moves the Court to dismiss the action for the following reasons:

1. Because the complaint fails to state a claim against defendant upon which relief can be granted;

2. Because the complaint discloses that the wool was stored under a written agreement between Commodity and this defendant that Commodity would indemnify and save this defendant harmless from any loss or damage to the wool or from any claim made against the Handler on account of such loss or damage provided such loss or damage does not result from the failure of this defendant or his agents to use due care in regard to the wool.

3. Because the complain discloses that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

By his attorneys,

WITHINGTON, CROSS, PARK & MCCANN,
(s) EDWARD C. PARK,
73 Tremont Street,
Boston, Massachusetts.

In United States District Court

Motion To Dismiss by Defendant Draper & Company, Inc.—Filed March 13, 1952

The defendant Draper & Company, Inc. moves the Court to dismiss the action for the following reasons:

1. Because the complaint fails to state a claim against the defendant upon which relief can be granted;

2. Because the complain does not allege that any loss or
38 injury to the wool was caused by this defendant's failure to exercise such care in regard to the wool as a reasonably careful owner of similar goods would exercise.

3. Because the complaint discloses that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

By his attorneys,

WITHINGTON, CROSS, PARK & MCCANN,
(s) EDWARD C. PARK,
73 Tremont Street
Boston, Massachusetts.

In United States District Court

Motion by Defendants Peerless Casualty Company, United Pacific Insurance Company, General Casualty Company of America to extend the time of pleading—Filed March 20, 1952

Now come the defendants Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America, and move to extend the time for filing their answers and for making motions directed to the pleadings until April 21, 1952.

By their attorneys,

WITHINGTON, CROSS, PARK & MCCANN,
(s) EDWARD C. PARK,
73 Tremont Street
Boston, Massachusetts.

Assented to
(s) STANLEY W. WISNIOSKI,
Asst. U. S. Attorney.

3/20/52

39 In United States District Court

Motion to dismiss by defendants Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America—Filed April 18, 1952

The defendants Peerless Casualty Company, United Pacific Insurance Company, and General Casualty Company of America move the Court to dismiss the action for the following reasons:

1. Because the complaint fails to state a claim against defendants upon which relief can be granted;

2. Because the complaint discloses that the wool was stored under a written agreement between Commodity and defendant Lindsay that Commodity would indemnify and save defendant Lindsay harmless from any loss or damage to the wool or from any claim made against the Handler on account of such loss or damage provided such loss or damage does not result from the failure of defendant Lindsay or his agents to use due care in regard to the wool.

3. Because the complaint discloses that the right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

By their attorneys,

WITHINGTON, CROSS, PARK & MCCANN,

(s) EDWARD C. PARK,

73 Tremont Street
Boston, Massachusetts.

On April 21, 1952, the foregoing motions to dismiss came before the court (Sweeney, Ch. J.) and after hearing, were taken under advisement. The motions were allowed on April 28, 1952 and the following judgment entered thereafter:

40 In United States District Court

Judgment of dismissal—Entered April 29, 1952

SWEENEY, Ch. J. In accordance with the Memorandum of the Court handed down on April 28, 1952, after hearing on defendants' motions to dismiss and the allowance thereof, it is hereby

ORDER.

Action dismissed with costs taxed at $
By the Court,

(s) HELEN I. TWEEDY,
Deputy Clerk.

April 29, 1952.
GEO. C. SWEENEY,
U. S. District Judge.
Entered April 29, 1952.

JOHN A. CANAVAN,
Clerk.

By (s) HELEN I. TWEEDY,
Deputy Clerk.

In United States District Court

Memorandum opinion—April 28, 1952

SWEENEY, Ch. J. In this action the plaintiff seeks to recover damages under a wool storage contract between Commodity Credit Corporation (hereinafter referred to as Commodity), a federally chartered corporation, and the defendant Lindsay. It alleges that a corporate predecessor to Commodity entered into a wool storage contract with Lindsay under which he agreed to and did store wool which he acquired in first class condition, but that when the wool was returned to Commodity on February 20, 1945 it was in a wet and damaged condition. It is asserted that this damage was caused by the failure of the defendant Lindsay to perform his obligation under the contract for proper storage and for
41 such care as the wool needed to be kept in a good condition.

The other defendants are the warehouseman who stored the wool and various surety companies.

The defendants have filed a Motion to Dismiss, claiming among other things that the cause of action is barred by the Statute of Limitations. This Court is of the opinion that the motion should be allowed. Title 15 U. S. C. A. § 714b(c) provides in part that:

> "No suit by or against the corporation shall be allowed unless (1) it shall have been brought within six years after the right accrued on which suit is brought, * * *.
>
> * * * * * *
>
> "Any suit by or against the United States as the real party in interest based upon any claim by or against the corporation shall be subject to the provisions of this subsection (c) of this section to the same extent as though such suit were by or against the corporation."

The right of action in this case accrued to Commodity's corporate predecessor on February 26, 1945 when the wool was returned in damaged condition. This suit was not brought until February 29, 1952. Consequently it is barred.

The original Commodity, a Delaware Corporation, was created as an agency of the United States in October, 1933, pursuant to Executive Order No. 6340. On June 29, 1948 the Commodity Credit Charter Act transformed Commodity into a federal corporation and provided among other things that:

> "The assets, funds, property, and records of * * *(the) Delaware corporation, are transferred to the Corporation."

and that

> "The enforceable claims of or against Commodity Credit Corporation * * * shall become the claims of or against, and may be enforced by or against the Corporation."

42

See 15 U. S. C. A. §714n. This act also provided for a four-year period of limitations, which was extended to six years by amendment in June, 1949 (63 Stat. 154, 156). Prior to the year 1948 there was no federally enacted provision containing a period of limitations applicable to suits by or against Commodity.

The Government contends that the statutory period of limitations enacted in 1948 operates prospectively and not retrospectively, and that as a result the present action is not barred. In support of this contention the Government cites three unreported decisions: United States v. Bowden, Civil No. 196, United States District Court for the Northern District of Georgia; United States v. Rabinoff, Civil No. 12200-Y, United States District Court for the Southern District of California; United States v. Hain, Civil No. 703-N, United States District Court for the Northern Division of the Middle District of Alabama.

This Court agrees that these cases stand for the proposition attributed to them by the Government, but regrets that it cannot agree with the distinguished jurists who rendered these decisions. It is my opinion that the limitation provision under consideration was intended to operate both prospectively and retrospectively. I base my conclusion on the plain and unequivocal language of § 714b (c) of title 15 U. S. C. A. That section requires that the action be brought "within six years after the right accrued on which suit is brought". To translate "accrued" as the equivalent of "acquired" by the Government or to read into the statute a provision to the effect that the period of limitation "accrues" only from the date of enactment of the statute seems to fly in the face of the express language of § 714b (c).

The Motions to Dismiss are allowed.

43 In United States District Court

Notice of appeal—Filed June 23, 1952.

Notice is hereby given this 23rd day of June 1952, that the United States of America, plaintiff in the above-entitled case appeals to the United States Court of Appeals for the First Circuit from the judgment of dismissal entered on the 29th day of April 1952 in favor of the defendants and against said plaintiff.

GEORGE F. GARRITY,
United States Attorney,
By: (s) STANLEY W. WISNIOSKI,
Assistant U. S. Attorney.

In United States District Court

Statement of points on which appellant intends to rely—Filed September 10, 1952

The United States of America, appellant, states that the points on which it intends to rely are as follows:

1. The District Court erred:

a. In holding that this action brought by the United States was barred by the Act of Congress of June 29, 1948. 15 U. S. C. 714.

b. In granting the defendant's motion to dismiss.

GEORGE F. GARRITY,
United States Attorney,
By: (s) STANLEY W. WISNIOSKI,
Assistant U. S. Attorney.

44 [Designation of contents of record on appeal omitted in printing.]

[Memorandum: Order of enlargement of time in the District Court for docketing case to and including September 21, 1952, is here omitted. John A. Canavan, Clerk.]

45 [Clerk's certificate to foregoing transcript omitted in printing.]

PROCEEDINGS IN COURT OF APPEALS

On December 2, 1952, this cause came on to be heard and was fully heard by the Court, Honorable Calvert Magruder, Chief Judge, and Honorable Peter Woodbury and Honorable John P. Hartigan, Circuit Judges, sitting.

Thereafter, to wit, on February 26, 1953, the following opinion of the Court was filed:

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT—OCTOBER TERM, 1952

No. 4686

UNITED STATES OF AMERICA, PLAINTIFF, APPELLANT,

v.

HAROLD T. LINDSAY ET AL., DEFENDANTS, APPELLEES

Appeal from the United States District Court for the District of Massachusetts

[105 F. Supp. 467]

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*

Melvin Richter, Attorney, Department of Justice, with whom *Holmes Baldridge*, Assistant Attorney General, *George F. Garrity*, United States Attorney, *Stanley Wisniewski*, Assistant U. S. Attorney, and *Paul A. Sweeney*, *George F. Foley* and *John G. Laughlin*, Attorneys, Department of Justice, were on brief, for appellant.

Edward C. Park, with whom Withington, Cross, Park & McGann was on brief, for appellees.

OPINION OF THE COURT—February 26, 1953

WOODBURY, *Circuit Judge*:

This is an appeal from a judgment entered on motion dismissing an action brought by the United States on a claim of its wholly-owned agency, Commodity Credit Corporation (chartered by Congress June 29, 1948, 62 Stat. 1070), to recover from a wool handler named Lindsay, his sureties, and Draper and Company, Inc., a warehouseman, for damage to wool owned by Commodity and stored while under Lindsay's control in Draper's warehouse.

It is alleged in the complaint that the agency named above is the "successor in interest" of another wholly government owned agency of the same name previously chartered by the United States under the laws of Delaware; that the latter corporation entered into a so-called "wool handler's agreement" with Lindsay in 1944; that pursuant to that agreement Lindsay had in his possession wool belonging to Commodity which he stored with Draper; and that on or about February 26, 1945, the wool was "returned to Commodity in a wet and damaged condition" caused by failure "to provide proper storage for the wool and to take such action as might be necessary to keep the wool in good condition." This action was filed on February 29, 1952, and the several defendants each seasonably moved for its dismissal on the ground, among others, that it appeared on the face of the complaint that the right of action set forth therein had not accrued within six years next preceding the bringing of the action. The court below granted the motions on the ground stated above and in consequence entered the judgment of dismissal from which this appeal is taken.

There was no federal statute putting a period of limitation upon suits by or against the original Commodity Credit Corporation—the one organized under the laws of Delaware. But in the Commodity Credit Corporation Charter Act of June 29, 1948, (62 Stat. 1070) creating the new federally chartered corporation of the same name, it was specifically provided in § 4(c) that "No suit by or against the Corporation shall be allowed unless it shall have been brought within four years after the right accrued on which suit is brought." In June 1949 the four-year time limitation for bringing suits was extended by amendment to six years (63 Stat. 154, 156), and the time limitation was specifically made applicable to suits such as this by the last sentence of § 4(c) of the 1948 Act wherein it is provided: "Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of this subsection (c) to the same extent as though such suit were by or against the Corporation." The question for decision, therefore, is whether the six year period of limitation began to run on February 26, 1945, when the wool was returned to original Commodity in damaged condition, or whether it did not begin to run until midnight June 30, 1948, when new Commodity came into being and the statute of limitations included in its Charter Act went into effect.

Giving the statutory language its literal meaning, there can be no doubt that the action brought by the United States is barred, for the cause of action sued upon came into existence, that is to say "accrued," as that word is ordinarily used, when the wool was returned in damaged condition on February 26, 1945, almost exactly seven years before this suit was brought. But counsel for the United

States say that to apply the statute to bar the present action is necessarily to give the statute retroactive effect, which on firmly established principles we are not to assume that Congress intended. Thus we are urged to construe the word "accrued" as having reference to June 30, 1948, the effective date of the statute which created present Commodity and provided a period of limitation upon suits by or against it or the United States as the real party in interest.

It is true that in the leading case of *Sohn* v. *Waterson*, 17 Wall. 596 (U.S. 1873), and in several cases both before and since, statutes putting a limitation on the time for bringing suit worded in much the same way as the statute under consideration were held on the general principle relied upon by the Government to have prospective effect only, that is, to affect existing causes of action only from the time of the passage of the statute limiting time for suit. But the cases in which this construction was adopted were cases between private parties, and the strained construction was openly resorted to only for the purpose of preventing the statutes from summarily cutting off existing rights, and for this reason being unconstitutional. In this case, however, we are not confronted with any constitutional problem.

Certainly Congress could put any period of limitation it thought expedient upon suits brought by an agency of its own creation, such as the one before us, without running any risk of constitutional invalidity. *United States* v. *Union Planters Nat. Bank & Trust Co.*, 175 F. 2d 684 (C.A. 5, 1949). Indeed counsel for the United States concede as much. But they say that a retroactive construction of the statute under consideration would create grave constitutional problems with respect to suits against Commodity, and, because the limitation is equally applicable to suits both "by or against the Corporation," no room is left for treating the two kinds of suits differently. We do not find the argument persuasive.

Since consent to sue the United States is a privilege which is revocable at any time (*Lynch* v. *United States*, 292 U.S. 571, 581 (1934); *Cummings* v. *Deutsche Bank*, 300 U.S. 115, 119 (1937)), it is by no means clear that Congress could not constitutionally cut off existing causes of action against Commodity by the expedient of enacting a limitation on the time for bringing suit against it. At any rate, there will be enough time to consider whether problems of constitutionality require an interpretation of the statutory provision as applied to suits against Commodity in accordance with the reasoning of *Sohn* v. *Waterson*, *supra*, and like cases, when a suit against Commodity on a stale claim such as the one sued upon here is before us for consideration. Then, presumably, we will be more fully advised as to the constitutional power of Congress to clothe Commodity with the sovereign immunity of the United States from suit, for it would seem from the language used that Congress in-

tended to give the wholly government owned corporate agency it created immunity as of the date of the agency's creation from suit on stale claims, but not immunity from suit on fresh ones. In the meantime speculation is idle. It will suffice to say that we see no reason to give the statutory language a strained construction in the situation before us merely because on the authorities perhaps we might have to give it a strained construction to save its constitutionality in a situation the converse of the one under consideration. In short, we do not think it would be too embarrassing to give the statutory language one meaning in the situation before us, and another in the converse situation of a suit against Commodity, if on full presentation we should feel that such a course was necessary to save the statute from successful attack on constitutional grounds. It follows from the foregoing discussion that we do not find the opinion of the Court of Appeals for the Sixth Circuit in *Field Packing Co. v. United States*, 197 F. 2d 220 (1952) persuasive.

Other arguments of counsel for the United States resting on other provisions of the Commodity Credit Corporation Charter Act and its legislative history have been considered and rejected as not persuasive in view of the clear language of the section under consideration.

The judgment of the District Court is affirmed.

PROCEEDINGS IN COURT OF APPEALS

On the same day, February 26, 1953, the following judgment was entered:

Judgment—February 26, 1953

This cause came on to be heard on the record on appeal from the United States District Court for the District of M[illegible]setts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

(S.) Roger A. Stinchfield,
Clerk.

Thereafter, on March 14, 1953, mandate issued.

CLERK'S CERTIFICATE

I, Roger A. Stinchfield, Clerk of the United States Court of Appeals for the First Circuit, certify that the foregoing pages numbered 1 to 52 inclusive, contain and are a true copy of the record and all proceedings to and including April 27, 1953, in the cause in said

Court numbered and entitled, No. 4886, United States of America, plaintiff, appellant, versus Harold T. Lindsay et al., defendants, appellees.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Court of Appeals for the First Circuit, at Boston, Massachusetts, in said First Circuit, this twenty-seventh day of April, A. D. 1953.

(S.) Roger A. Stinchfield,
Clerk.

[SEAL]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1953 252770 1953

58 SUPREME COURT OF THE UNITED STATES

No. 24, October Term, 1963

UNITED STATES OF AMERICA, PETITIONER
vs.
HAROLD T. LINDSAY ET AL.

Order allowing certiorari. Filed October 18, 1963

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1963